IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8303 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE D.A.MEHTA

HON'BLE MS.JUSTICE H.N.DEVANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NEW COOL WELL INTERNATIONAL & 2 - Petitioner(s)

Versus

UNION OF INDIA THR' SECRETARY & 2 - Respondent(s)

==========

Appearance :

MR PARESH M DAVE for Petitioner No(s).: 1,2.

DS AFF.NOT FILED (N) for Respondent No(s).: 1.

MR JITENDRA MALKAN for Respondent No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 2.

==========

CORAM :THE HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 27/06/2005

ORAL JUDGMENT

(Per : THE HON'BLE MR.JUSTICE D.A.MEHTA)

1 Heard Mr.Dhaval Shah, learned Advocate for the petitioner.

RULE. Mr.Malkan appearing on behalf of the respondents waives service of Rule and the matter is taken up for final hearing and disposal with consent of the learned Counsel.

2 The petition seeks directions qua the respondent authorities to release the goods covered under Bill of Entry Nos.F-3497 & F-3498, both dated 3.11.2000. The petitioner imported various goods under two Bills of Entry and declared the same as scrap meant for home consumption. The Adjudicating Authority vide his Order-in-Original dated 21.4.2003 (Annexure-A) came to the conclusion that the impugned goods were not scrap and hence the imported consignment

totally weighing 39,280 MT was directed to be confiscated with option to get it released by payment of redemption fine. Penalty was also levied on the petitioner as well as its clearing Agent. The matter was carried in appeal before the Central Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai. CESTAT for the reasons stated in its impugned order dated 10.09.2004 set aside the Order-in-Original and allowed the appeal with consequential reliefs. The grievance of the petitioner is that despite having succeeded before the CESTAT the respondent authorities are not releasing the goods in question.

3 As against that Mr.Jitendra Malkan on behalf of the respondents has placed reliance on Affidavit-in-Reply (wrongly titled as Rejoinder Affidavit) dated 20.6.2005 sworn by one Shri Damien D'Costa Fernandes, Assistant Commissioner of Customs, Kandla. The main thrust of the reply is that the respondents have already preferred tax appeal against the impugned order of Tribunal dated 10.9.2004 and in the circumstances, as the order of the Tribunal has not attained finality the Court should not exercise jurisdiction under

Article 226 of the Constitution to issue any directions.

4 In the aforesaid circumstances, the Tax Appeal being Tax Appeal No. 439 of 2005, was taken up for hearing today and by a separate order of even date the said Tax Appeal has been dismissed by this Court holding that no substantial question of law arose out of the impugned order of the Tribunal. In the circumstances, the respondents have now no valid reason to withhold the goods as the basis on which the goods were confiscated have been found to be untenable at law and on facts by the Tribunal as confirmed by this Court. It is necessary to take note of Circular No.695/11/2003-CX dated 24.2.2003 issued by the Central Board of Excise and Customs, New Delhi. In the said circular it has specifically been directed that *"order of High Court/Tribunal should be implemented unless a stay has been obtained from the higher judicial forum on the implementation of the order"*. Furthermore, the Board has decided to permit Jurisdictional Commissioner to take decision in such cases on merits at that level to grant refund or release the goods without seeking permission /clearance from the Board.

5 In the result, on the facts and in the circumstances of the case, as well as in law and in the light of the aforesaid circular of the Board the respondent revenue has no ground to withhold the release of the imported consignment. Therefore, the respondent authorities, especially respondent No.2 is directed to release the goods imported under Bill of Entry Nos.F-3497 & F-3498 both dated 3.11.2000 on or before 8.7.2005.

6 The petition is accordingly allowed. Rule made absolute. The respondent shall pay the cost quantified at Rs.2500/-. The petition stands disposed of accordingly.

(D.A.MEHTA,J)

(H.N.DEVANI,J)

m.m.bhatt